



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2016-0777]

RIN 1625-AA08

Special Local Regulation; San Diego Sharkfest Swim; San Diego Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is temporarily changing the enforcement date and the location of the special local regulation for the annual San Diego Sharkfest Swim event held on the navigable waters of San Diego Bay, San Diego, CA. The change of enforcement date and the location for the special local regulation is necessary to provide for the safety of life on navigable waters during the event. This action will restrict vessel traffic in the waters of the San Diego Bay, California, from 9:00 a.m. to 10:00 a.m. on October 2, 2016, from Fifth Avenue Landing to Tidelands Park, Coronado, CA. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 7 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2016-0777 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the

“Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Robert Cole, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619-278-7656, e-mail D11MarineEventsSD@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
TFR	Temporary Final Rule
LNM	Local Notice to Mariners
COTP	Captain of the Port
SMIB	Safety Marine Information Broadcast

II. Background, Purpose and Legal Basis

The San Diego Sharkfest Swim race is an annual recurring event listed in Table 1, Item 10 of 33 CFR 100.1101, Southern California Annual Marine Events for the San Diego COTP Zone. Special local regulations exist for the marine event to allow for special use of the San Diego Bay, San Diego, CA for this event. 33 U.S.C. 1233, authorizes the Coast Guard to establish and define special local regulations to promote the safety of life on the navigable waters during regattas or marine parades.

III. Discussion of Proposed Rule

The San Diego Sharkfest Swim race is an annual event normally held on a weekend day in September or October on the waters of San Diego Bay, San Diego, CA.

33 CFR 100.1101 lists the annual marine events and special local regulations in

Southern California within the San Diego COTP Zone. The enforcement date and regulated location for this marine event are listed in Table 1, Item 10 of Section 100.1101.

The date listed in the Table indicates that the marine event will occur on a Saturday in September or October, on the waters of San Diego Bay, California, from Seaport Village to Coronado Ferry Landing. However, this proposed temporary rule will change the event date to Sunday, October 2, 2016, and the location from Fifth Avenue Landing to Tidelands Park, to reflect the actual date and location of the event.

The regulations in 33 CFR 100.1101 will be temporarily suspended for Table 1, Item 10 of that section and a temporary regulation will be inserted as Table 1, Item 19 of that section in order to reflect that the special local regulation will be effective and enforced from 9:00 a.m. to 10:00 a.m. on October 2, 2016. This change is needed to accommodate the sponsor's event plan and ensure that adequate regulations are in place to protect the safety of vessels and individuals that may be present in the regulated area. No other portion of Table 1 of § 100.1101 or other provisions in § 100.1101 shall be affected by this regulation.

The special local regulations are necessary to provide for the safety of the crew, spectators, participants, and other vessels and users of the San Diego Bay waterway. Persons and vessels will be prohibited from anchoring, blocking, loitering, or impeding within this regulated waterway unless authorized by the COTP, or his designated representative, during the proposed times. Before the effective period, the Coast Guard will publish information on the event in the weekly LNM. The proposed regulatory text appears at the end of this document.

IV. Regulatory Analysis

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation. Optional waterway routes exist to allow boaters to travel around the marine event area, without impacting the race, once the last swimmer has cleared the middle of the channel. Moreover, the Coast Guard would publish a Local Notice to Mariners about the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their

fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the impacted portion of the San Diego Bay, San Diego, CA, from 9:00 a.m. to 10:00 a.m. on October 2, 2016.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: traffic will be allowed to pass around the regulated area once the last swimmer has cleared the middle of the channel with the permission of the COTP, or his designated representative, and the special local regulation is limited in size and duration. Before the effective period, the Coast Guard will publish event information on the internet in the weekly LNM marine information report, as well as provide a SMIB via marine radio during the event. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about

this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted

for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishment of marine event special local regulations on the navigable waters of the San Diego Bay. It is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the “FOR FURTHER INFORMATION CONTACT” section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels .

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will

consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the Federal Register (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33

CFR part 100 as follows:

PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233

2. In § 100.1101, in Table 1 to § 100.1101, suspend item “10” and add temporary item “19” to read as follows:

§ 100.1101 Southern California Annual Marine Events for the San Diego Captain of the Port Zone.

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TABLE 1 TO § 100.1101

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19. San Diego Sharkfest Swim	
Sponsor	Enviro-Sports Productions, Inc.
Event Description	Swim Race
Date	October 2, 2016
Location	San Diego Bay, CA.
Regulated Area	The waters of San Diego Bay, CA from Fifth Avenue Landing to Tidelands Park, Coronado, CA.

Dated: September 1, 2016.

J. R. Buzzella

Captain, U.S. Coast Guard

Captain of the Port San Diego.

[FR Doc. 2016-22227 Filed: 9/14/2016 8:45 am; Publication Date: 9/15/2016]